

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,865  
 )  
Appeal of )

## INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her food stamps. The issue is whether the petitioner and her minor child can be considered a separate "household" from her adult child under the pertinent statute and regulations.<sup>1</sup>

## DISCUSSION

The facts are not in dispute. The petitioner lives with a minor child and an adult child. The adult child is working. The petitioner and her minor child purchase and prepare meals separate from the adult child.

The petitioner's family's circumstances are identical to those of the petitioner in Fair Hearing No. 9423, decided by the board on May 3, 1990.<sup>2</sup> (The Department has appealed this decision to the Vermont Supreme Court, where the case is still pending.)

ORDER

For the reasons expressed in Fair Hearing No. 9423, the Department's decision in this matter is reversed.

FOOTNOTES

<sup>1</sup>The petitioner refused to provide the Department with information about her adult child's wages. Although her food stamps were closed due to this "noncooperation", the real issue is whether the Department must count this income in determining the petitioner's eligibility for food stamps.

<sup>2</sup>(See also Fair Hearing No. 10,712.) It appears that in Fair Hearing No. 9423 the board and the parties were referring to outdated regulations. F.S.M. § 273.1(a) was substantially amended effective June 1, 1988. Under the amended regulations parents and siblings of a parent with minor children were specifically exempted from the deeming provisions. See Id. § 273.1(a)(2)(C) and (D). This brought the regulation more into compliance with the federal statute, although the Department in Fair Hearing No. 9423 (apparently unaware of the amendments) argued that only "three generation households" were exempt from deeming (see discussion in Fair Hearing No. 9423, p.p. 4 - 6).

However, the amendments did not go far enough. As the board pointed out in Fair Hearing No. 9423 (p. 4), the parenthetical "notwithstanding. . ." clause of 7 U.S.C. § 2012 is clearly exemplary, not exclusive. There is simply no basis in the language of the statute not to also exempt from the deeming provisions an adult child of "a parent with minor children". Clearly the words "any other persons" and "including", which appear parenthetically in clause (3) of § 2012, mean that clause (3) households are not limited to the given examples. By limiting the deeming exceptions to parents and siblings of "parents with minor children", the regulation still conflicts with this part of the statute. Thus, the board's analysis in Fair Hearing No. 9423 remains apt.

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